

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)
)
 Plaintiff,)

v.)

Case No. CIV-011-177-D

SM ENERGY COMPANY (including)
predecessors, successors and affiliates),)
ENERVEST ENERGY INSTITUTIONAL)
FUND XIII-A, L.P., ENERVEST ENERGY)
INSTITUTIONAL FUND XIII-WIB, L.P.,)
ENERVEST ENERGY INSTITUTIONAL)
FUND XIII-WIC, L.P., ENERVEST)
OPERATING, L.L.C., and FOURPOINT)
ENERGY, LLC,)
)
 Defendants.)

**ORDER AND JUDGMENT GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

This is a class action lawsuit brought by Class Representative, Chieftain Royalty Company, on behalf of itself and as representative of a Class of royalty owners (defined below), against SM Energy Company (“SM”) and EnerVest Energy Institutional Fund XIII-A, L.P., EnerVest Energy Institutional Fund XIII-WIB, L.P., EnerVest Energy Institutional Fund XIII-WIC, L.P., EnerVest Operating, L.L.C. (collectively “EnerVest”) and FourPoint Energy, LLC (“FourPoint”) (EnerVest and FourPoint are collectively referred to as the “Settling Parties”), for the alleged underpayment of gas royalties. On

August 5, 2015, Plaintiff and the Settling Parties¹ executed a Stipulation and Agreement of Settlement (the “Settlement Agreement”), finalizing the terms of the Settlement.²

On September 1, 2015, the Court preliminarily approved the Settlement and issued an Order Granting Preliminary Approval of Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Form and Manner of Notice, and Setting Date for Final Fairness Hearing [Doc. No. 115] (the “Preliminary Approval Order”). In the Preliminary Approval Order, the Court, *inter alia*:

- a. certified the Class for settlement purposes, finding all requirements of Federal Rule of Civil Procedure 23 have been satisfied with respect to the proposed Settlement Class;

¹ For clarification and the avoidance of any doubt as to the scope of the Settlement Agreement and this Order and Judgment, the EnerVest-FourPoint Properties at issue in the Litigation are listed in Exhibit 2 attached thereto (subject to correction as provided in paragraph 1.7 of the Settlement Agreement). SM retained, and did not sell or otherwise convey to any of the Settling Parties, certain of the wells and properties covered by the Litigation (“SM-Retained Properties,” further defined in the Settlement Agreement). However, notwithstanding anything in this Order and Judgment that might appear to be to the contrary, the Settlement Agreement does not cover or release any claims whatsoever against SM relating to the SM-Retained Properties. As of the date of the Settlement Agreement, Litigation remains pending against SM related to its payment of royalty on gas and its constituents produced from the SM-Retained Properties, and such Litigation related to the SM-Retained Properties remains unaffected by the Settlement Agreement and this Order and Judgment. However, the Settlement Agreement specifically covers and releases any liabilities of SM related to the EnerVest-FourPoint Properties, including claims with respect to the time period prior to SM’s conveyance of such properties to certain EnerVest entities.

² Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Settlement Agreement.

b. appointed Plaintiff, Chieftain Royalty Company, as Class Representative and the law firms of Barnes & Lewis, LLP and Nix, Patterson & Roach, LLP as Class Counsel;

c. preliminarily found: (i) the proposed Settlement resulted from extensive arm's-length negotiations; (ii) the proposed Settlement was agreed to only after Class Counsel had conducted legal research and fact and expert discovery regarding the strengths and weaknesses of Class Representative's and the Class' claims; (iii) Class Representative and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Class;

d. preliminarily approved the Settlement as fair, reasonable, and adequate and in the best interest of the Class;

e. preliminarily approved the form and manner of the proposed Notice, and Summary Notice to be communicated to the Class, finding specifically that such Notice and Summary Notice, among other information: (i) described the terms and effect of the Settlement; (ii) notified the Class that Class Counsel will seek attorneys' fees, reimbursement of Litigation Expenses, and a Case Contribution Award for Class Representative's services; (iii) notified the Class of the time and place of the Final Fairness Hearing; (iv) described the procedure for requesting exclusion from the Settlement; and (v) described the procedure for objecting to the Settlement or any part thereof;

f. instructed the Settling Parties to disseminate the approved Notice to the Class and to publish the Summary Notice in accordance with the Settlement Agreement and in the manner approved by the Court, with all costs of administering such Notice to be borne by the Settlement Fund;

g. provided for the appointment of a Settlement Administrator;

h. provided for the appointment of an Escrow Agent;

i. set the date and time for the Final Fairness Hearing as November 30, 2015 at 1:30 P.M. in the United States District Court for the Western District of Oklahoma; and

j. set out the procedures and deadlines by which Class Members could properly request exclusion from the Class or object to the Settlement or any part thereof.

After the Court issued the Preliminary Approval Order, due and adequate notice by means of the Notice and Summary Notice was given to the Class, notifying them of the Settlement and the upcoming Final Fairness Hearing. On November 30, 2015, in accordance with the Preliminary Approval Order and the Notice, the Court conducted a Final Fairness Hearing to, *inter alia*:

a. determine whether the Settlement should be approved by the Court as fair, reasonable, and adequate and in the best interests of the Class;

b. determine whether the notice method utilized by the Settling Parties: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated under the circumstances to apprise Class Members of

the pendency of the litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement or any part thereof, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

c. determine whether to approve the Plan of Allocation and distribution of the Net Settlement Fund to Class Members;³

d. determine whether a Judgment should be entered pursuant to the Settlement Agreement, *inter alia*, dismissing the Litigation against the Settling Parties with prejudice and extinguishing, releasing, and barring all Released Claims against all Released Parties in accordance with the Settlement Agreement;

e. determine whether the applications for attorneys' fees, reimbursement for Litigation Expenses, and Case Contribution Award to Class Representative are fair and reasonable and should be approved;⁴ and

f. rule on such other matters as the Court deems appropriate.

The Court, having reviewed the Settlement Agreement and all related pleadings and filings, and having heard the evidence and argument presented at the Final Fairness Hearing, now **FINDS, ORDERS, and ADJUDGES as follows:**

³ The Court will issue a separate order pertaining to the allocation and distribution of the Net Settlement Proceeds among Class Members (the Plan of Allocation Order).

⁴ The Court will issue a separate Order pertaining to Class Counsel's request for attorneys' fees and reimbursement of Litigation Expenses and Class Representative's request for a Case Contribution Award.

1. The Court, for purposes of this Order and Judgment, adopts all defined terms as set forth in the Settlement Agreement and incorporates them as if fully set forth herein.

2. The Court has jurisdiction over the subject matter of this Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and Class Members.

3. The Class, which was certified in the Court's Preliminary Approval Order, is defined as:

All non-excluded persons or entities who are or were royalty owners in those Oklahoma wells acquired by one or more EnerVest and/or FourPoint entities from SM pursuant to a Purchase and Sale Agreement dated November 4, 2013, and where an EnerVest, FourPoint and/or SM entity is or was the operator (or, as a non-operator, an EnerVest, FourPoint and/or SM entity separately marketed gas). The Class Claims relate only to payment for gas and any of its constituents (e.g., helium, residue gas, natural gas liquids, nitrogen and condensate) produced from the Class Wells, and not to payment for gas and any of its constituents produced from the SM-Retained Properties. The Class does not include overriding royalty owners or other owners who derive their interest through the oil and gas lessee.

The persons or entities excluded from the Settlement Class are: (1) agencies, departments or instrumentalities of the United States of America and the State of Oklahoma; (2) publicly traded oil and gas exploration companies and their affiliates; (3) persons or entities that Plaintiff's counsel is, or may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; and (4) officers of the Court.

The Court finds that the above-defined Class has been properly certified for the purposes of this Settlement. The Court finds that the persons and entities identified in the attached Exhibit 1 have filed timely and valid Requests for Exclusion and are hereby excluded

from the foregoing Class, will not participate in or be bound by the Settlement, or any part thereof, as set forth in the Settlement Agreement, and will not be bound by or subject to the Releases provided for in this Order and Judgment.

4. As used in this Order and Judgment, the following terms shall have the following meanings:

a. **“Released Claims”** include all claims associated with the marketing of, and the calculation, reporting and payment of royalty on, gas and its constituents (including, but not limited to, helium, residue gas, natural gas liquids, nitrogen and condensate) during the Claim Period for each Class Well. The Released Claims and allegations specifically include all claims that a Class Member could make with regard to the following allegations: (1) that SM and the Settling Parties underpaid royalty as a result of direct or indirect deductions from (or factoring such costs into) royalty associated with marketing, gathering, transporting, compressing, dehydrating, treating, blending, processing, including plant and compressor fuel, and similar services with respect to gas and its constituents produced from the Class Wells; (2) that SM and the Settling Parties improperly paid royalty based on proceeds received from sale of the gas and gas constituents produced from the Class Wells under “percentage of proceeds” (“POP”), “percentage of index” (“POI”), or similar contracts; (3) that SM and the Settling Parties underpaid royalty on gas and gas constituents produced from the Class Wells by not paying royalty on gas used in operations, gas used for gas plants, and gas used in the manufacture of products (“fuel gas”); (4) that SM and the Settling Parties failed to pay or underpaid royalty on drip gas, condensate or other substances that separated from the gas stream in the gathering system, gas plant or other facilities with respect to gas and gas constituents produced from the Class Wells; (5) that SM and the Settling Parties underpaid royalty by not paying royalty on the full value (before deduction of any costs) of residue gas, natural gas liquids or other products that were part of the gas stream produced from the Class Wells; (6) that SM and the Settling Parties misled Class Members in monthly royalty payments as to, among other things, the amount and nature of deductions from royalty on gas and gas constituents produced from the Class Wells; (7) that SM and the Settling Parties violated their alleged fiduciary duties to the Class Members; (8) that SM and the Settling Parties failed to provide all of the information required by the Oklahoma Production Revenue Standards Act (PRSA) on monthly check stubs, and otherwise failed to comply with the PRSA; (9) that SM and the Settling

Parties failed to make diligent efforts to secure the best terms available for the sale of gas and its constituents; (10) that SM and the Settling Parties failed to account to Class Members for the full value of the production, including all deductions and reductions from the value of production; (11) that affiliate or self-dealing transactions of SM and/or the Settling Parties violated the rights of the Class Members; and (12) that as a result of SM's and the Settling Parties' actions with respect to the Class Wells, SM and the Settling Parties are liable to Class Members for breach of contract, tortious breach of contract, breach of fiduciary or quasi-fiduciary duty, actual fraud, constructive fraud, deceit, conversion, conspiracy, unjust enrichment/dissipation, accounting, punitive damages, statutory interest and penalties under the PRSA or otherwise, and fees (attorney fees, expert fees and other litigation costs) under the PRSA. The Released Claims also include all other legal theories sounding in tort, contract or otherwise that, based on the facts alleged in the Petition and subsequent Complaints in the Litigation (as the same have been amended from time to time), could have been asserted against SM and/or the Settling Parties as to the Class Wells and as to the period of time covered by the Claim Period, except to the extent described in the next paragraph.

The Released Claims do not include any claims against SM related to the SM-Retained Properties, which are the subject of the ongoing Litigation. The Released Claims further do not include any allegations of underpayment or other claims with respect to royalty paid by third party operators (*i.e.*, operators other than SM and any of the Settling Parties) who marketed gas on behalf of SM and/or any of the Settling Parties. The Plaintiff and members of the Settlement Class agree that SM and the Settling Parties have no liability for any such claims. The Released Claims do not include any claims associated with production that occurs after August 1, 2015. The Released Claims also specifically do not include: (a) royalty payment adjustments made or to be made in the ordinary course of business (b) claims that SM or the Settling Parties are obligated to make routine prior period adjustments for clerical or administrative errors concerning prices actually received, volumes actually sold or produced, or decimal interest designations of the type that historically have been addressed by SM or the Settling Parties by way of prior-period adjustments, but only to the extent that SM or the Settling Parties in fact received, or hereafter receive, a retroactive price, volume or value adjustment; (c) claims to money held in suspense by SM or the Settling Parties as of the release date; (d) claims that SM or the Settling Parties failed to comply with obligations to protect the Class Members from drainage; (e) and/or claims that SM or the Settling Parties breached obligations to the Class Members to develop Oklahoma oil and gas leases. "**Class Claims**" shall have the

same meaning as “**Released Claims.**”

b. “**Released Parties**” means SM, the Settling Parties, and all past and present parents, affiliates, directors, officers, employees, attorneys, agents, consultants, servants, stockholders, members, representatives, subsidiaries, predecessor entities of, and affiliated successor entities to SM and/or any of the Settling Parties. Released Parties shall also include the assignor of any Class Wells for which SM or the Settling Parties have assumed the assignor’s liability for any alleged royalty underpayment, but only as to Class Claims with respect to such assigned Class Wells during the Claim Period. Other working interest owners in Class Wells also constitute Released Parties, but only to the extent SM or any of the Settling Parties marketed gas and its constituents and paid royalty on behalf of such other working interest owners during the Claim Period(s). No claims are released against other working interest owners to the extent of any gas that they separately marketed from Class Wells. No claims are released as to gas marketed for SM or the Settling Parties by third-party operators not affiliated with SM or the Settling Parties; however, the Settlement Class and all Class Members covenant not to sue the Released Parties for any alleged royalty underpayment with respect to such gas and its constituents marketed by others during the Claim Period for any Class Well. The Settlement Class does not release SM’s or the Settling Parties’ assignees in Class Wells for any claims occurring or arising after the Claim Period(s) for any well(s) so assigned to any assignee. Released Parties do not include any entity to whom SM or the Settling Parties have sold any of the Class Wells (and associated Class Leases and Class Force Pooled Royalty Interests) as to any claims occurring or arising after the Claim Period(s) for any Class Well(s) sold to any such entity. SM is only a Released Party to the extent necessary to release SM from the Released Claims related to the Class Wells comprising the EnerVest-FourPoint Properties. SM’s inclusion in the term “Released Parties” is not intended in any way to release SM from any claims related to the SM-Retained Properties.

5. At the Final Fairness Hearing on November 30, 2015, the Court fulfilled its duties to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement and the Notice provided to the Class, considering not only the pleadings and arguments of Plaintiff and the Settling Parties and their respective Counsel, but also the concerns of any objectors and the interests of all absent Class Members. In so doing,

the Court considered arguments that could reasonably be made against, *inter alia*, approving the Settlement and the Notice, even if such argument was not actually presented to the Court by pleading or oral argument.

6. The Court further finds that due and proper notice, by means of the Notice and Summary Notice, was given to the Class in conformity with the Settlement Agreement and Preliminary Approval Order. The form, content, and method of communicating the Notice disseminated to the Class and the Summary Notice published pursuant to the Settlement Agreement and the Preliminary Approval Order: (i) constituted the best practicable notice under the circumstances; (ii) constituted notice reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the litigation, the Settlement, their right to exclude themselves from the Settlement, their right to object to the Settlement or any part thereof, and their right to appear at the Final Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, the Due Process protections of the State of Oklahoma, and any other applicable law. Therefore, the Court approves the form, manner, and content of the Notice and Summary Notice. The Court further finds that all Class Members have been afforded a reasonable opportunity to request exclusion from the Class or object to the Settlement.

7. Pursuant to and in accordance with Federal Rule of Civil Procedure 23, the Settlement, including, without limitation, the Settlement Amount, the releases, and the

dismissal with prejudice of the Released Claims against the Released Parties as set forth in the Settlement Agreement, is finally approved as fair, reasonable and adequate and in the best interests of the Class. The Settlement Agreement was entered into between the Settling Parties at arm's-length and in good faith after substantial negotiations free of collusion. The Settlement fairly reflects the complexity of the Claims, the duration of the Litigation, the extent of discovery, and the balance between the benefits the Settlement provides to the Class and the risk, cost, and uncertainty associated with further litigation and trial. The Settling Parties are hereby authorized and directed to comply with and to cause the consummation of the Settlement in accordance with the Settlement Agreement, and the Clerk of this Court is directed to enter and docket this Order and Judgment in the Action.

8. By agreeing to settle the Litigation, the Settling Parties do not admit, and they instead specifically deny, that the Litigation could have otherwise been properly maintained as a contested class action, and specifically deny any and all liability to the Class, Class Representative and Class Counsel.

9. The Court finds that on September 10, 2015, the Settling Parties caused notice of the Settlement to be served on the appropriate state official for each state in which a Class Member resides, and the appropriate federal official, as required by and in conformance with the form and content requirements of 28 U.S.C. § 1715. In connection therewith, the Court has determined that, under 28 U.S.C. § 1715, the appropriate state official for each state in which a Class Member resides was and is the State Attorney General for each such state, and the appropriate federal official was and is the Attorney

General of the United States. Further, the Court finds it was not feasible for the Settling Parties to include on each such notice the names of each of the Class Members who reside in each state and the estimated proportionate share of each such Class Members to the entire Settlement as provided in 28 U.S.C. § 1715(b)(7)(A); therefore, each notice included a reasonable estimate of the number of Class Members residing in each state and the estimated proportionate share of such Class Members. No appropriate state or federal official has entered an appearance or filed an objection to the entry of final approval of the Settlement. Thus, the Court finds that all requirements of 28 U.S.C. § 1715 have been met and complied with and, as a consequence, no Class Member may refuse to comply with or choose not to be bound by the Settlement and this Court's Orders in furtherance thereof, including this Order and Judgment, under the provisions of 28 U.S.C. § 1715.

10. The Litigation and the Complaint and all claims included therein, as well as all Released Claims are dismissed with prejudice as to the Released Parties. The Litigation and the Complaint are not dismissed regarding claims against SM relating to the SM-Retained Properties. The Court finds that all Released Claims were filed against the Settling Parties in good faith by Class Representative and Class Counsel in accordance with Federal Rule of Civil Procedure 11. All Class Members who have not validly and timely submitted a Request for Exclusion to the Settlement Administrator as directed in the Notice and Preliminary Approval Order, on behalf of themselves and their respective predecessors, successors, and assigns, are hereby deemed to have finally, fully, and forever conclusively released, relinquished, and discharged all of the Released Claims against the Released Parties and are barred and permanently enjoined from

prosecuting, commencing, or continuing any of the Released Claims against the Released Parties. Plaintiff and the Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement or in this Order and Judgment.

11. The Court also approves the efforts and activities of the Settlement Administrator, Rust Consulting, Inc., and the Escrow Agent, Wells Fargo, in assisting with certain aspects of the administration of the Settlement, and directs them to continue to assist Plaintiff and the Settling Parties in completing the administration and distribution of the Settlement in accordance with the Settlement Agreement, this Order and Judgment, the Plan of Allocation, and the Court's other Orders.

12. Notwithstanding the foregoing paragraphs, nothing in this Order and Judgment shall bar any action or claim by Plaintiff or the Settling Parties to enforce or effectuate the terms of the Settlement Agreement or this Order and Judgment.

13. This Order and Judgment and the Settlement Agreement—including any provisions contained in or exhibits attached to the Settlement Agreement; any negotiations, statements, or proceedings in connection therewith; or any action undertaken pursuant thereto—shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms of this Order and Judgment or the Settlement Agreement or to defend or bring an action based on the Release provided herein, and are not and shall not be deemed, described, or construed to be or offered or received as evidence of a presumption, concession, declaration, or admission by any person or entity of the truth of any fact alleged in the Litigation; the validity or invalidity of any claim or defense that was, could have been, or might be asserted; the amount of

damages, if any, that would have been recoverable in the Litigation; or any liability, negligence, fault, or wrongdoing of any person or entity.

14. As separately set forth in detail in the Court's Plan of Allocation Order, the proposed plan of allocation and distribution of the Net Settlement Fund among Class Members is approved as fair, reasonable and adequate, and Class Counsel and the Settlement Administrator, with the cooperation and assistance of the Settling Parties, are directed to administer the Settlement in accordance with the Plan of Allocation Order.

15. The Court finds that Plaintiff, the Settling Parties, and their counsel have complied with the requirements of the Federal Rules of Civil Procedure as to all proceedings and filings in this Action. The Court further finds that Class Representative and Class Counsel adequately represented the Class in entering into and implementing the Settlement.

16. No Class Member shall have any claim against Class Counsel, the Settling Parties' Counsel, the Released Parties, the Settlement Administrator, the Escrow Agent, or any of their respective designees or agents based on the distributions made substantially in accordance with the Settlement Agreement, the Court's Plan of Allocation Order, or other Orders of the Court.

17. Except as may otherwise be set forth in the Settlement Agreement, this Order and Judgment or other order of the Court, or as otherwise prescribed by law, neither Class Counsel, Class Representative, the Released Parties, nor the Settling Parties' Counsel shall have, as the case may be, any responsibility for, interest in, or liability with respect to: (i) the design, administration, or implementation of the Plan of Allocation

Order and distribution of the Net Settlement Amount among Class Members; (ii) the determination, collection or administration of taxes; (iii) any act, omission, or determination of Class Counsel, the Escrow Agent, the Settling Parties, the Settling Parties' counsel, or the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (iv) the management, investment, or distribution of the Gross Settlement Fund or Net Settlement Amount; (v) the determination, administration, calculation, or distribution of the Gross Settlement Fund or Net Settlement Amount; (vi) the administration of the Escrow Account; (vii) any losses suffered by, or fluctuations in the value of, the Escrow Account, the Gross Settlement Fund, or the Net Settlement Amount; (viii) the payment or withholding of any taxes, expenses, or costs incurred in connection with the taxation of the Gross Settlement Fund or the Net Settlement Amount or the filing of any tax returns; or (ix) any expenses, costs, or losses incurred in connection with any of the above, except for those expenses and costs expressly provided for in the Settlement Agreement.

18. No Class Member shall have any claim against Class Counsel, Class Representative, the Released Parties, or the Settling Parties' Counsel with respect to the items listed in the above paragraph, subject to the express exceptions set forth in said paragraph.

19. Any order approving or modifying the Plan of Allocation Order, the distribution of the Net Settlement Amount among Class Members, the application by Class Counsel for an award of attorneys' fees or reimbursement of Litigation Expenses, or the request of Class Representative for a Case Contribution Award or reimbursement

of reasonable costs and expenses shall not disturb or affect the finality of this Order and Judgment, the Settlement Agreement, or the Settlement contained therein.

20. Without affecting the finality of this Order and Judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Litigation, Class Representative, the Class, the Settling Parties and the other Released Parties for the purposes of: (i) supervising and/or determining the fairness and reasonableness of the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Plan of Allocation Order, and this Order and Judgment; (ii) hearing and determining any application by Class Counsel for an award of attorneys' fees, costs, and Litigation Expenses and/or a Case Contribution Award for Class Representative, if such determinations were not made at the Final Fairness Hearing; (iii) supervising the distribution of the Net Settlement Fund; (iv) resolving any dispute regarding a party's right to terminate the Settlement pursuant to the Settlement Agreement; (v) enforcing the terms of the Settlement Agreement, including the entry of injunctive or other relief to enforce, implement, administer, construe and interpret the Settlement Agreement; (vi) exercising jurisdiction over any challenge to the Settlement Agreement on any basis whatsoever; and (vii) the remaining claims in this Litigation against SM related to the SM-Retained Properties.

21. In the event the Settlement is terminated as the result of a successful appeal of this Order and Judgment or does not become final in accordance with the terms of the Settlement Agreement for any reason whatsoever, then this Order and Judgment shall be rendered null and void and shall be vacated to the extent provided by and in accordance

with the Settlement Agreement. The provisions of the Settlement Agreement relating to termination of the Settlement Agreement shall be complied with including the repayment by Class Counsel of any attorneys' fees, costs and other litigation expenses that may have been previously awarded by the Court. In such an event, all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

22. In the event that Class Representative or the Settling Parties institute any legal action against the other to enforce any provision of the Settlement Agreement or this Order and Judgment or to declare rights or obligations thereunder, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs incurred in connection with any such action.

23. The Released Claims asserted in this Litigation are hereby SEVERED AND DISMISSED WITH PREJUDICE to the refiling of the same or any portion thereof by or against the Released Parties. The claims in this Litigation against SM related to the SM-Retained Properties are not dismissed, are unaffected by this Order and Judgment, and the Court retains jurisdiction of same. The Court retains jurisdiction pursuant to paragraph 20 above to administer the Settlement distribution process as contemplated in the Court's separate Plan of Allocation Order, and to issue an additional Order pertaining to, *inter alia*, Class Counsel's request for attorneys' fees and reimbursement of reasonable Litigation Expenses and Class Representative's request for a Case Contribution Award. Notwithstanding the Court's jurisdiction to issue additional Orders in this Litigation, this Order and Judgment fully disposes of all claims as to the Settling Parties and, as to the

Class Wells and Release Period and is therefore a final appealable judgment. The Court expressly finds that this action presented claims against multiple defendants and, pursuant to Rule of Civil Procedure 54(b) that there is no just reason for delay in the finality of this Order and Judgment. To the extent necessary in light of the fact that the Released Claims have already been severed from the Litigation, the Court further hereby expressly directs the Clerk of the Court to file this Order and Judgment as a final order and final judgment in this Action.

24. The Court finds that the two objections [Doc. No. 130 and Doc. No. 133] are overruled and hereby severed from this Action for the purposes of appeal. In the event any objector appeals this Order and Judgment or any other rulings of this Court, such objector is hereby ordered to post a cash bond in an amount to be set by the Court.

IT IS SO ORDERED this 23rd day of December, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

Exhibit 1 – Persons/Entities Requesting Exclusion from Settlement

1	Myra B. Ward, Trustee, on Behalf of Myra B. Ward Revocable Trust
2	Ward Petroleum Corporation
3	Ward X LLC
4	L. O. Ward, Trustee, on behalf of L. O. Ward Revocable Trust
5	Thistle Royalty Company LLC
6	Tower Royalty Company LLC
7	Rhino Resources Company LLC
8	JMA Energy Company LLC
9	Burlington Resources Oil and Gas